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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

BLACK CARD LLC, a Wyoming Limited
Liability Company,

Plaintiff,

v.

AMERICAN EXPRESS MARKETING &
DEVELOPMENT CORP. a Delaware corporation;
AMERICAN EXPRESS TRAVEL RELATED
SERVICES COMPANY, INC. a New York
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. 10cv0025-D

**DECLARATION OF KELLY AKIN IN SUPPORT OF
PLAINTIFF BLACK CARD LLC'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

I, Kelly Akin, declare as follows:

1. I am the Vice President, Business Development of plaintiff Black Card LLC ("BC LLC"). I have held that position since November 15, 2007. I make this Declaration in support of BC LLC's Motion for Partial Summary Judgment. I make this Declaration based on my own personal knowledge except as to those matters stated herein on information and belief, and if called upon as a witness, I could and would competently testify thereto.
2. On information and belief, on September 20, 2005, BC LLC's predecessor filed the application that resulted in the registration of Registrant's "BLACKCARD" Mark for use in connection with credit and debit card services. On information and belief, as early as July of 2007, BC LLC began marketing its credit card.
3. In 2008, BC LLC entered into agreements with Barclays Bank and Visa to offer credit card services under the Mark.
4. BC LLC began using the Mark in commerce in February 2009 in connection with the issuance of credit and debit cards and has used it continuously ever since.
5. On April 28, 2009, the United States Patent and Trademark Office issued the Certificate of Registration for "BLACKCARD."

6. The Black Card offered by BC LLC is an exclusive credit card that provides cardholders – Black Card Members – with benefits including concierge services, access to airport lounges, travel insurance, rewards programs, and luxury gifts. Membership is limited to just one percent of United States residents to ensure high quality personal service to each cardholder.

7. The annual fee for the Black Card is \$495 with no initiation fee. Applications for the Black Card are accepted on-line at [<http://www.blackcard.com/>].

8. Since approximately December 1, 2008, BC LLC has expended significant amounts advertising its Black Card, including for several full page advertisements in well known and widely circulated newspapers and periodicals, including the Wall Street Journal, Vanity Fair, The New York Times, USA Today, GQ, Vogue, Esquire, Forbes, Fortune and Business Week.

9. BC LLC has also engaged in significant television advertising, including commercials during shows with significant viewership ratings such as college football and basketball games, NBA basketball games and the Victoria's Secret Fashion Show. The launch of the Black Card has garnered a significant amount of favorable media attention and articles, including for example, in Forbes and the New York Post. The Black Card was also featured in a segment of the popular The Colbert Report television show, which segment was further disseminated on many publicly available internet websites.

10. Recently, BC LLC added a "Back in Black" marketing campaign consisting of print and video pieces that include the famous "Back in Black" song by the world-renowned rock

and roll band AC/DC, which licensed the use of its song to BC LLC.

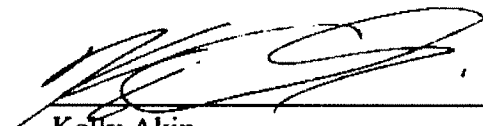
11. The Mark is conspicuously affixed to the credit card that is associated with the credit card services BC LLC provides. BC LLC's credit card is made with carbon. A true and correct image of the front of a Black Card is attached as Exhibit 13.

12. The Mark is prominently displayed on marketing materials for the credit card services BC LLC provides. True and correct samples of BC LLC's advertisements, website print-outs and other promotional materials are attached collectively as Exhibit 14.

13. In my role as Vice President, Business Development of BC LLC, I obtained certain materials American Express sends to its Centurion members. On information and belief, American Express sends its Centurion members publications titled *Centurion*. On information and belief, true and correct copies of the covers of two such *Centurion* publications are attached as Exhibit 15.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 14, 2010 at Jackson, Wyoming.



Kelly Akin